

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FRANCO MENTA,

Plaintiff,

COMMUNITY COLLEGE OF BEAVER  
COUNTY,

Defendant.

Civil Action No. 03-1283

MEMORANDUM OPINION

CONTI, District Judge

Plaintiff Franco Menta (“plaintiff” or “Menta”) commenced this action against the Community College of Beaver County (“defendant” or the “college”) alleging discrimination in violation of Title VII of the Civil Rights Acts of 1964 and 1991, 42 U.S.C. § 2000e-2(a) and the Pennsylvania Human Relations Act (“PHRA”), 43 PA.CON.S.TAT.ANN. § 951 *et seq.* This court heard evidence and argument during a bench trial on September 5, 2006, September 6, 2006 and October 5, 2006. On October 19, 2006, defendant filed proposed findings of fact and conclusions of law. On October 30, 2006, plaintiff filed his proposed findings of fact and conclusions of law. Defendant filed supplemental proposed findings of fact and conclusions of law on November 14, 2006.

Pursuant to Federal Rule of Civil Procedure 52, this court makes the following findings of fact and conclusions of law.

**A. Findings of Fact**

1. In 1989, plaintiff, a male, was hired by defendant as a vocational education supportive services specialist. Trial Tr. of Sept. 5, 2006, at 37. Plaintiff was employed in the Office of Supportive Services, which is part of the college's Learning Center. Trial Tr. of Sept. 6, 2006, at 8. The title of plaintiff's position changed from supportive services specialist to special services specialist II. In that position, despite the change in title, plaintiff continued to perform job duties similar to those duties he performed prior to the change. Id. at Trial Tr. of Sep. 5, 2006 at 98-99.
2. In performing the duties of his position, plaintiff secured documentation for disabled students in an effort to provide supportive services to the students. Supportive services included, for example, assistance with note taking, providing special equipment and providing deaf interpreters for classes. Trial Tr. of Sept. 5, 2006, at 37. Plaintiff also reviewed the students' respective transcripts to ensure that the students were performing at satisfactory levels in their classes. Id. at 39. When a student exhibited academic problems in a given class, plaintiff provided or arranged for tutoring and acted as a liaison between the student and the student's instructors. Id.
3. Plaintiff's position was funded by three different sources of funding - the Act 101 grant, the Carl Perkins grant and institutional funds. Trial Tr. of Sept. 6, 2006 at 65-66. The Carl Perkins grant was utilized to provide services for special population students, i.e., individuals with disabilities, displaced homemakers, single parents and others. Id. at 207-08.
4. The special services specialist position was renewed on a year-to-year basis. The position

was contingent upon receiving funding from the Carl Perkins grant. Trial Tr. of Sept. 5, 2006, at 71; Def. Exs. A, B.

### **College Restructuring**

5. In 1997, defendant began a reorganization of the Learning Center. The college president desired to provide a “one stop shop” where both day and evening students could receive required services relating to recruitment, financial aid and other general information. The president, therefore, sought to restructure the affected departments. Trial Tr. of Sept. 6, 2006, at 63-64.
6. Defendant’s Carl Perkins Participatory Committee (the “Perkins Committee”) consists of individuals from the community and the college. Id. at 69-70, 208. It is the Perkins Committee’s responsibility to recommend and assist the college in allocating funds that the college receives through the Perkins grant. Id. at 208. The Perkins Committee reviewed the restructuring plan submitted by the college and determined whether the college was making appropriate adjustments. Id. at 70. The Perkins Committee approved the restructuring plan. Id. at 74, 124. A number of positions within the Office of Support Services were to be eliminated as a result of the approved restructuring plan. Def. Exs. J-M.
7. By a memorandum dated June 10, 2002, defendant notified the affected employees and advised those employees about certain details relating to the restructuring. Def. Ex. L. Plaintiff, Cheryl Harrington (“Harrington”), a supportive services specialist, and Michele Pavelek (“Pavelek”), a case manager, were informed that their respective positions would be terminated effective June 28, 2002. Id. The memorandum further notified the

affected employees that “[s]hould the College receive substantial approval for the 2002/2003 Perkins Local Plan, two full-time grant funded positions [would] become available.” Id. The June 10, 2002, memorandum informed the employees that they would be given an early opportunity to preview the job vacancy postings for the new positions. Id. Finally, the memorandum directed interested employees to prepare for the application process and contact David Albanese (“Albanese”), director of human resources, with any questions. Id.

8. During a June 13, 2002 meeting, the Office of Support Services employees were advised that the group would be reorganized and that there would be two new positions created. Trial Tr. of Sept. 6, 2006 at 75-76. Def. Ex. J. The parties stipulated that there was, in fact, a reorganization and that defendant believed that the reorganization was necessary. Id. at 62.
9. Pursuant to the restructuring plan, the Learning Center received approval for two new positions - special populations coordinator and career link/service specialist. Id. at 203, 219. Jan Kaminski (“Kaminski”), the Perkins vocational coordinator, developed the job descriptions and qualifications for the two new positions. Id. In developing the two new job descriptions and qualifications, Kaminski reviewed a number of academic publications and job postings of a similar nature. Id. at 203-06, 218-19. The description of the new positions, as developed by Kaminski, were reviewed and approved by the Perkins Committee. Id. at 208-09.
10. Kaminski provided information relating to the job descriptions and qualifications for both the special populations coordinator and career link/service specialist positions to

Albanese. Trial Tr. of Oct. 5, 2006 at 8-10. In response, Albanese created job postings for both positions. Id. at 10. The job descriptions created by Kaminski were more detailed than the job postings created by Albanese. Pl. Exs. 16-19.

11. The job posting for the special populations coordinator position identified the position as the “Special Populations Coordinator”. The primary responsibilities listed in the job posting for the special populations coordinator position informed applicants that the job required individuals to “coordinate office staff, procedures and services to meet the needs of career and technical education special populations students, including students with disabilities.” Pl. Ex. 16.
12. The qualifications listed in the job posting for the special populations coordinator position included:

Bachelor’s Degree in Special Education, Psychology or Rehabilitation Counseling preferred, or an Associate Degree (concentration in Psychology/Social Sciences) required.

Three years experience in a Postsecondary Disabled Student Services environment working with individuals with physical challenges and learning disabilities, required.

Higher Education Disability Services CEU’s and/or Certification preferred.

Knowledge of Postsecondary Perkins Local Plan Assurance documentation requirements for Special Populations, preferred.

Pl. Ex. 16. Plaintiff and Harrington possessed the requisite qualifications to apply for the special populations coordinator position. See supra ¶¶ 22-25, 28.

13. The job posting for the career link/services specialist position identified the position as the “CareerLink/Services Specialist”. The primary responsibilities listed in the job

posting for the career link/services specialist position informed applicants that the job required individuals to “effectively and efficiently enroll eligible customers on the Pennsylvania CareerLink system. Provide individualized career services and job placement assistance and make referrals to outside support agencies, as necessary.” Pl. Ex. 18.

14. The qualifications listed in the job posting for the career link/services specialist position included:

Bachelor’s Degree preferred, Associate Degree required.

Proficiency in the use of computer-based systems, as well as Microsoft Word, required.

Two years experience serving customers in a social service environment preferred.

Pl. Ex.18. Plaintiff and Pavelek possessed the requisite qualifications to apply for the career link/services specialist position. See supra ¶¶ 22, 24, 26.

15. Plaintiff received proper notification of the vacancies. Trial Tr. of Sept. 6, 2006, at 210-11.
16. Candidates interested in the two new positions were told to submit a letter of intent and anything else the candidate wanted to provide. Trial Tr. of Oct. 5, 2006, at 14. Beyond a letter of intent, defendant did not require or advise candidates to provide additional information for the application process. Trial Tr. of Sept. 6, 2006, at 14, 210-11. Applicants were free to submit additional information to the interview committee, but they were not required to do so. Trial Tr. of Oct. 5, 2006, at 14, 20-21. Candidates were given an opportunity to review the job postings, but were not given copies of either job

description before their respective interviews. Trial Tr. of Sept. 5, 2006 at 78-79; Trial Tr. of Sept. 6, 2006, at 104-05, 184, 194, 222, 234; Trial Tr. of Oct. 5, 2006, at 37.

17. Kaminski did not discuss the job descriptions with any of the candidates. Trial Tr. of Sept. 6, 2006, at 184. Kaminski who participated in the interviews for the special populations coordinator position did not discuss the nature of the work to be performed in either position with any candidate prior to the interviews. Id. at 222-23. Albanese, who participated in the interviews for both positions, did not discuss the job descriptions with any candidate prior to the interviews. Trial Tr. of Oct. 5, 2006, at 36. Mike Macon (“Macon”), vice-president of the college, who participated in the interviews for both positions, did not disclose job descriptions for either position to any candidate prior to the interview. Trial Tr. of Sept. 6, 2006, at 104. Scott Ensworth (“Ensworth”), dean of enrollment, who participated in the interview for the career link/services specialist position, did not provide copies of the job descriptions to any candidate prior to the interviews. Id. at 234.
18. At the time of the restructuring, plaintiff was the only male employed in the Office of Support Services. Trial Tr. of Sept. 5, 2006, at 46-47. Plaintiff did not socialize with the other employees in his office. Trial Tr. of Sept. 5, 2006, at 48-49. At the time of the restructuring, Kaminski and Harrington did not socialize outside of work. Trial Tr. of Sept. 6, 2006, at 185. Kaminski and Harrington, however, occasionally went to lunch. Id. at 187-88. Plaintiff never went to lunch with the other employees. Trial Tr. of Sept. 5, 2006, at 48-19. Kaminski occasionally brought pizza to work for the employees. Plaintiff would share the pizza, brought by Kaminski, with his colleagues. Trial Tr. of

Sept. 6, 2006, at 188-89.

19. When plaintiff learned about the interview process, he believed that the interviewers had already made up their minds about who would be hired for the two new positions. Trial Tr. of Sept. 5, 2006, at 103, 112, 116, 119, 127. Plaintiff believed that the interview process was a sham because of a “gut feeling.” Id. at 106, 112-13, 116, 125, 148. Plaintiff, who was the only male to apply for either of the two new positions, thought that the interviewers were unfair to male applicants during the interview process. Plaintiff’s opinions were based on a “belief that [he] had.” Id. at 109, 116, 125, 128-29, 148.
20. Prior to the interviews for the new positions, plaintiff asked Macon whether plaintiff would have a position with the college after the restructuring. Macon advised plaintiff that he should look for other avenues. Id. at 80. Macon told plaintiff to consider the options that were available to plaintiff. The reason Macon gave plaintiff that advice was because plaintiff’s position was not going to be renewed and the new position would be different. Trial Tr. of Sept. 6, 2006, at 57.
21. The interviewers did not require additional information regarding transcripts, job performance or continuing education, but an applicant was permitted to bring those materials to the interview. Trial Tr. of Oct. 5, 2006, at 20-21. During the interviews, the interviewers did not ask additional questions about the applicants’ transcripts, job performance or continuing education, but instead relied upon the information submitted by the applicants. Trial Tr. of Sept. 6, 2006, at 9-10, 73; Trial Tr. of Oct. 5, 2006, at 56, 66-67, 82-83.

### **Qualifications of Interviewees**



22. While employed by defendant, plaintiff received yearly performance evaluations. Pl. Exs. 2-6. The performance evaluations contained the following ratings: not acceptable, fair, good, superior and outstanding. Trial Tr. of Sept. 5, 2006 at 40. Plaintiff never received a rating of “not acceptable” in any category. Id. at 40-41. Plaintiff received a rating of “fair” in 2 categories throughout his career with defendant. Plaintiff routinely performed at a rating of “good” or “superior”. Id. Plaintiff was generally well-liked among students at the college with whom he worked. Id. at 171.
23. Harrington received yearly performance evaluations. Harrington never received a rating of “not acceptable” or “fair”. Harrington consistently received ratings of “good”, “superior” and “outstanding”. Pl. Exs. 40-41.
24. With respect to educational backgrounds of the interviewees, plaintiff had an associate degree from the college. Pl. Ex.1. Additionally, plaintiff previously had completed approximately 132 credits toward his bachelors degree at Robert Morris University. Trial Tr. of Sept. 5, 2006 at 33; Pl. Ex. 1. During his college course work, plaintiff completed thirteen or fourteen courses in social sciences. Trial Tr. of Sept. 5, 2006, at 34-35.
25. Harrington had an associates degree from Slippery Rock University in social science and was enrolled in a bachelors program focusing on psychology. Harrington had not completed many credits in her baccalaureate work. Trial Tr. of Sept. 6, 2006, at 191; Pl. Ex. 39.
26. Pavelek had an associates degree from the college. Trial Tr. of Oct. 5, 2006, at 31. Pavelek did not have a bachelor’s degree. Id. at 76.
27. While employed with defendant, plaintiff attended between seven and thirteen seminars.

Trial Tr. of Sept. 5, 2006 at 33-34.

28. Harrington, who had been employed by the college since June 1999, had attended seven seminars and training sessions by March 2002. Pl. Ex. 39.

### **Resumes Submitted for New Positions**

29. Plaintiff submitted his resume as part of his application for both positions Pl. Ex. 1. Plaintiff's resume contained the following description of his employment objectives: "position **in the travel industry** in customer service, public relations or security." Id. (emphasis added). Plaintiff's resume highlighted his organizational, communication, research, tutoring and records management skills. Plaintiff noted his ability to solve problems on an "individual and group bases." Additionally, the resume highlighted plaintiff's experience in the fields of catering and security. Id. The resume did not indicate that plaintiff had an interest in applying for a position in the career services or social sciences fields.
30. Harrington's resume submitted for the special populations coordinator position listed the desired position as "Career & Technical Education Special Populations Coordinator." Harrington's resume detailed her current position with the college and accentuated Harrington's relevant prior work history. Harrington highlighted her professional development efforts by detailing her continuing education classes. Pl. Ex. 39.
31. Ensworth remembered that Pavelek brought her resume to the interview. Trial Tr. of Sept. 6, 2006 at 239.<sup>1</sup>

### **Special Populations Coordinator Position Interviews**

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<sup>1</sup>Pavelek's resume was not submitted into evidence during the trial.

32. On June 26, 2002, plaintiff and Harrington interviewed for the special populations coordinator position. Trial Tr. of Sept. 6, 2006, at 8. Each candidate was interviewed by an interview committee consisting of two men, Macon and Albanese and one women, Kaminski. Trial Tr. of Oct. 5, 2006, at 11, 15-16; Pl. Pl. Exs. 23-25. At the time of the trial, Macon and Kaminski were both employed by defendant. Trial Tr. of Sept. 6, 2006, at 58-61, 168. At the time of trial, Albanese was no longer employed by defendant but was instead employed by Carnegie Mellon University. Trial Tr. of Oct. 5, 2006 at 7.
33. The interviewer's evaluation sheets contained categories in the following nine areas: experience/work record, education and training, dependability, motivation, knowledge of CCBC, interpersonal skills, interview conduct, availability and attitude. Pl. Exs. 20-31. All three interviewers ranked Harrington higher overall in the categories than plaintiff during the interview process. Pl. Exs. 20-25.
34. Kaminski's ratings for plaintiff included "good" in four categories and "average" in five categories. Kaminski noted that plaintiff "did not answer any of the questions directly or accurately." Pl. Ex. 20. Kaminski also noted that plaintiff appeared to believe that he should receive the special populations coordinator position because of his length of service at the college. Id. Kaminski found that plaintiff exhibited an attitude of entitlement throughout the interview. Trial Tr. of Sept. 6, 2006, at 197.
35. Kaminski's ratings for Harrington included "very good" in seven categories and "good" in two categories. With respect to Harrington's interview, Kaminski noted that Harrington had "[e]xcellent oral communication skills" and "answered each question directly and accurately." Pl. Ex. 23. Kaminski further noted that Harrington possessed

the educational background, continuing educational training and work experience that qualified Harrington for the position. Id.

36. One of the reasons Kaminski rated Harrington higher than plaintiff was because of Harrington's continuing education units. Trial Tr. of Sept. 6, 2006, at 192. Although Kaminski had not advised Harrington to do so, Harrington came to the interview with a portfolio containing information related to her training and experience. Plaintiff did not bring any similar materials with him to his interview. Id. at 192-93.
37. Macon's ratings for plaintiff included "very good" in one category, "good" in four categories and "average" in four categories. Macon noted that plaintiff did not specifically answer questions and only generally referred to the processes. Macon commented that plaintiff did not refer to his qualifications during the interview process, but instead referred to his length of service at the college. Pl. Ex. 21.
38. Macon's ratings for Harrington included "very good" in five categories and "good" in four categories. Macon noted that Harrington was very nervous during the interview, but found that Harrington appeared to "take a special interest in her work" and understood the processes. Pl. Ex. 24.
39. Macon's ratings took into consideration the fact that he had previously reviewed student files maintained by each of the candidates. Macon found Harrington's work to be superior to plaintiff's work. Id. at 82-84. Macon noted that plaintiff had previously violated Perkins standards in failing properly to document a student's file on one occasion. Id. at 159. Plaintiff had failed to follow procedures when obtaining an accommodation for a student. Id. at 172-73; Def. Exs. O and P. Plaintiff was formally

reprimanded for his failure to follow procedures. Trial Tr. of Sept. 5, 2006, at 137-38.

Macon noted that plaintiff provided only minimal information regarding his continuing education. Trial Tr. of Sept. 6, 2006, at 18. Macon noted that Harrington presented a portfolio containing information relating to her experience and background working with adaptive technology and that plaintiff had not done so. Id. at 86-87.

40. Albanese's ratings for plaintiff included "very good" in one category, "good" in two categories, and "average" in six categories. Albanese noted that plaintiff "generalized his answers instead of specifically answering them." Albanese commented that plaintiff wanted the position because of his length of time with the college. Pl. Ex. 22. Albanese noted that he was familiar with plaintiff's demeanor and found that plaintiff's demeanor during the interview was not what he would have expected from plaintiff. Trial Tr. of Oct. 5, 2006, at 85.
41. Albanese's ratings for Harrington included "very good" in one category and "good" in eight categories. Albanese noted that Harrington answered questions relating to processes using a team approach. Pl. Ex. 25.
42. Albanese noted that plaintiff appeared to have a sense of entitlement because of his length of service with the college. Trial Tr. of Oct. 5, 2006, at 23-24. Another reason Albanese scored Harrington higher than plaintiff was because plaintiff did not have the best work record at that point. Id. at 24. Harrington had provided the interview committee with information relating to her continuing education efforts that related to the special populations coordinator position. Id. at 19-20. Albanese noted that many candidates bring portfolios to interviews to show the interviewers in an effort to showcase the

applicants' talents for the interviewers. Id. at 23-24.

43. The interviewers did not require additional information regarding transcripts, job performance or continuing education, but an applicant was permitted to bring those materials to the interview. Id. at 20-21. The interviewers did not ask additional questions about the applicants' transcripts, job performance or continuing education, but instead relied upon the information submitted by the applicant. Trial Tr. of Sept. 6, 2006, at 9-10, 73; Trial Tr. of Oct. 5, 2006, at 56, 66-67, 82-83. There is no evidence of record that plaintiff brought either his college transcripts or information about his continuing education efforts to the interview.
44. Upon completion of both interviews, the interview committee discussed their respective ratings of each candidate. Each of the interviewers rated the candidates independently and without input from the other interviewers. Trial Tr. of Sept. 6, 2006, at 97-99. The interview sheets and comments from the interview committee members, reflect that each interviewer ranked Harrington as the superior candidate. Pl. Exs. 20-25.
45. By letter dated June 26, 2002, Albanese informed plaintiff that he had not been selected for the special populations coordinator position. Trial Tr. of Oct. 5, 2006, at 25-26; Pl. Ex.32. Plaintiff received this letter of rejection on June 28, 2002. Trial Tr. of Oct. 5, 2006, at 90-91.
46. The special populations coordinator position was offered to Harrington, who is a woman. Id. at 33.

#### **Career Link/Services Specialist Position**

47. On June 27, 2002, plaintiff and Pavelek interviewed for the career link/services specialist

position. Trial Tr. of Oct. 5, 2006, at 31, 34.

48. The interview committee for the career link/services specialist position consisted of three men, Macon, Albanese and Ensworth. Trial Tr. of Oct. 5, 2006, at 33; Pl. Exs. 26-31. At the time of trial, Macon and Ensworth were employed by defendant. Trial Tr. of Sept. 6, 2006, at 58-61, 231. At that time, Albanese was not employed by defendant. Trial Tr. of Oct. 5, 2006, at 7.
49. With respect to the career link/services specialist position, on the interview form, which was the same form used in the interviews for the special populations coordinator position, Albanese's ratings for plaintiff included "good" in two categories and "average" in seven categories. Albanese noted that plaintiff did not respond completely to questions, but did appear compassionate toward students. Pl. Ex. 26. Albanese considered plaintiff's "improprieties in the workplace" when scoring plaintiff. Trial Tr. of Oct. 5, 2006, at 29-30. Plaintiff presented himself as being entitled to the position because of his length of service with the college. Id. at 22-23.
50. Albanese rated Pavelek "good" in all nine categories. Albanese noted that Pavelek was organized and liked to complete tasks. He also noted that Pavelek appeared to get pulled in different directions and needed to improve her ability to prioritize. Pl. Ex. 30.
51. Albanese found that Pavelek was punctual, completed tasks and fully answered questions during the interview. Albanese believed that Pavelek was highly motivated. Id. at 35.
52. Macon's ratings for plaintiff relating to the career link/services specialist position included ratings of "very good" in one category, "good" in four categories and "average" in four categories. Macon found that plaintiff did not fully answer questions and

appeared to be looking for any full-time job. Macon noted that plaintiff was not prepared for the interview. Pl. Ex. 27. In making his evaluation, Macon noted he had concerns about plaintiff's work history and experience because plaintiff had "issues" with students and others. Macon also had concerns about plaintiff because of plaintiff's answers to questions during the interview. Trial Tr. of Sept. 6, 2006, at 101-02. Macon did not believe that plaintiff was prepared for the interview. Id. at 102. Macon did not believe that plaintiff wanted to be at the interview. He noted that plaintiff's interaction was not good during the interview. Id. at 106.

53. Macon rated Pavelek "very good" in four categories and "good" in five categories. While Macon noted that Pavelek's language was a little rough, he found that she otherwise made a good presentation. Pl. Ex. 29. Macon found Pavelek was well organized during the interview process, but plaintiff was not. Id. at 105-06.
54. Ensworth rated plaintiff "good" in three categories and "average" in six categories. Ensworth found that plaintiff exhibited a weakness in answering questions asked during the interview. Pl. Ex. 28. As a result of plaintiff's demeanor, Ensworth questioned whether plaintiff was actually interested in the position. Trial Tr. of Sept. 6, 2006, at 237. There is no evidence that plaintiff brought a portfolio of his work with him to the interview. Plaintiff did not fully answer questions and did not provide details about his work or educational experience. Id. at 236.
55. Ensworth's ratings for Pavelek included ratings of "very good" in seven categories and "good" in two categories. Ensworth found that Pavelek had good organizational skills and did a "nice job of interviewing." Pl. Ex. 31. Pavelek brought a portfolio of her work



with career services. Trial Tr. of Sept. 6, 2006, at 236. Ensworth believed that Pavelek was more interested in or committed to the position than plaintiff. Id. at 237-38.

56. Ensworth rated Pavelek higher on his evaluation in part because Pavelek had completed an internship in career services and had worked there part-time. Ensworth believed that experience was more valuable than plaintiff's number of years with the college because those years were not spent in the career services area. Id. at 235. Ensworth was further impressed by Pavelek's portfolio and presentation. Id. at 236-37. Pavelek submitted to the interviewing committee additional information relating to her performance and qualifications for the career link/service specialist position. Id. at 102, 130, 236.
57. Upon completion of all of the interviews, the interview committee discussed their respective ratings of each candidate. Each of the interviewers rated the candidates independently and without input from the other interviewers. Trial Tr. of Oct. 5, 2006, at 87. Each interviewer ranked Pavelek as the superior candidate. Pl. Exs. 26-31.
58. By letter incorrectly dated June 26, 2002, Albanese informed plaintiff that he had not been selected for the career link/services specialist position. Id. at 38; Pl. Ex. 33. Albanese testified that the letter should have been dated June 27, 2002 not June 26, 2002 because it would not have been drafted until after the interviews were concluded. Id. at 39. Plaintiff received this letter of rejection on June 28, 2002. Id. at 99-101.
59. The career link/service specialist position was given to Pavelek, who is a female. Id. at 33.

#### **Plaintiff's Views about the Interview Process**

60. Plaintiff believed that the interviewers had made up their minds about the successful

candidates prior to the interviews. Trial Tr. of Sept. 5, 2006 at 103, 112, 116 and 127.

Plaintiff further believed that the other candidates were given copies of job descriptions prior to interviews so that they could adequately prepare for the interviews. Id. at 147-48.

Plaintiff asserts that he would have taken a portfolio and transcripts to the interview or updated his resume if he had received a copy of the job descriptions prior to the interview. Id. at 147.

### **Plaintiff's Termination**

61. Because plaintiff did not receive either the special populations coordinator or the career link/service specialist position, plaintiff's employment by the college was terminated on approximately June 27, 2002. Pl. Exs. 32-33.

### **B. Conclusions of Law**

1. Title VII was enacted to prohibit employers from discriminating against employees with respect to the compensation, terms, conditions, or privileges of employment. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 259 (1981). Since its inception, Title VII has made it an "unlawful employment practice for any employer . . . to discriminate against any individual . . . *because of* such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a).<sup>2</sup>
2. In order to meet his burden of proof the plaintiff must (1) present direct evidence of discrimination that meets the requirements set forth in Price Waterhouse v. Hopkins, 490

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<sup>2</sup>The Title VII analysis applies to plaintiff's PHRA claims. "We construe Title VII and the PHRA consistently. See Atkinson v. La Fayette College, 460 F.2d 477, 454 n.6 (3d Cir. 2006). . . ." Scheidemantle v. Slippery Rock Univ., No. 05-3850, 2006 U.S. App. LEXIS 31141, at n.5 (3d Cir. Dec.19, 2006).

U.S. 228 (1989), or (2) present “indirect evidence of discrimination that satisfies the familiar three-step framework of McDonnell Douglas Corp., 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).” Fakete v. Aetna, Inc., 308 F.3d 335, 337-38 (3d Cir. 2002).

3. This case does not involve direct evidence of discrimination; therefore, this court must apply the three-step, burden-shifting framework of the McDonnell Douglas test.
4. The first step of the McDonnell Douglas test requires a plaintiff to present evidence sufficient for a reasonable trier of fact to find each element of a prima facie case. Fakete, 308 F.3d at 338 n.3. To establish a prima facie case of sex discrimination, a plaintiff must establish that: (1) he is a member of a protected class; (2) he is qualified for the position sought; (3) he was rejected for the position; and (4) that the employer filled the position with a similarly situated person from a different class. Barber v. CSX Distribution Services, 68 F.3d 694, 698 (3d Cir.1995).
5. Defendant does not dispute that plaintiff established a prima facie case for a claim for sex discrimination. This court finds, therefore, that plaintiff met the burden to establish the first step of the McDonnell Douglas test.
6. The second step of the McDonnell Douglas test places the burden on the defendant to produce evidence that it had “a legitimate, nondiscriminatory reason for the discharge.” Id. McDonnell Douglas Corp. v. Green, 411 U.S. at 802.
7. Defendant’s reason for not hiring plaintiff for either the special populations coordinator position or the career link/service special position was that defendant was not the best candidate for the position. Defendant asserts that the individuals hired for the positions received higher scores from the interviewers and, thus, were better candidates for their

respective positions. As articulated, defendant met its burden to show a “legitimate, nondiscriminatory” basis for its employment decision. See Smithers v. Bailar, 929 (F.2d 892, 895-96 (3d Cir.1980).

8. If the first and second steps of the McDonnell Douglas test are satisfied, the third step will require the plaintiff to adduce sufficient evidence “from which a factfinder could reasonably either (1) disbelieve the employer’s articulated legitimate reasons[,] or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer’s actions.” Fakete, 308 F.3d at 338, n.3.
9. “To discredit an employer’s articulated reason, a plaintiff need not produce evidence that necessarily leads to the conclusion that the employer acted for discriminatory reasons.” Simpson v. Kay Jewelers, Div. of Sterling, Inc., 142 F.3d 639, 644 (3d Cir.1998) (citing Sempier v. Johnson & Higgins, 45 F.3d 724, 732 (3d Cir.1995)). Instead, a plaintiff must point to “weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons [such] that a reasonable factfinder could rationally find them ‘unworthy of credence’ and hence infer ‘that the employer did not act for [the asserted] non-discriminatory reasons’” Fuentes v. Perskie, 32 F.3d 759, 765 (3d Cir.1994) (quoting Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 531 (3d Cir.1992); Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 638 (3d Cir.1993)).
10. In Ezold, the court made clear that “barring discrimination, a company has the right to make business judgments on employee status, particularly when the decision involves subjective factors deemed essential to certain positions.” Ezold, 983 F.2d at 527 (quoting Billet v. CIGNA Corp., 940 F.2d 812, 825 (3d Cir.1991)).

11. In the instant matter, this court must determine whether defendant's articulated business reason for not hiring him for either the special populations coordinator or career link/service specialist position is unworthy of credence. After considering the evidence, the court finds that the plaintiff did not meet his burden to show defendant's reason was unworthy of credence.
12. Many of the factors evaluated by the interviewing committee required subjective opinions of the respective interviewers. For various reasons, the interviewers gave plaintiff lower scores than the successful candidates. During the interviews, it appears that plaintiff exhibited a sense of entitlement because of his length of service with the college and did not emphasize his credentials. Throughout the process, plaintiff showed a lack of preparedness and interest. For a number of reasons, this court concludes that plaintiff did not engage in the competitive process in a manner requisite for him to be selected for one of the two new positions.
13. First, upon review of plaintiff's resume, it is clear that plaintiff was not applying for a position as either a special populations coordinator or a career link/service specialist position. Plaintiff's resume indicated that he was seeking a position in the travel industry. The resume highlighted attributes that had little or nothing to do with the responsibilities attendant to the vacancy postings for the two new positions at the college. For example, plaintiff's resume highlighted his experience in the field of security, hotel management and catering. The resume simply did not address, in detail, plaintiff's qualifications for the posted positions.
14. By contrast, Harrington's resume detailed her experience and continuing education as

those attributes related to the job vacancies. Plaintiff insists that Harrington received a copy of the job description prior to the interview and was able to make her resume conform to the job description. This court finds no merit in plaintiff's assertions.

15. Each interviewer denied giving Harrington, Pavelek or any other candidate a copy of the job description prior to the interview. The vacancy postings, which plaintiff had access to, listed the desired positions and gave the minimum qualifications for the job.

Harrington, unlike plaintiff, took the initiative to submit a resume that conformed with the vacancy posting. Testimony from Ensworth indicated that Pavelek's resume discussed her qualifications and work experience as it applied to the career link/services specialist position. This court is not convinced that Harrington and Pavelek needed the actual job descriptions in order to conform their resumes to the desired position.

Harrington and plaintiff each worked in positions at the college that dealt with responsibilities somewhat similar to the duties of the special populations coordinator position. It would not be abnormal, and indeed appropriate, for any candidate to state the desired position was the job identified in the job posting and to identify skills relating to the qualifications identified in the posting. Plaintiff apparently did not have or take the time to review the posting and revise his resume to fit the positions for which he was applying. Rather, he simply submitted a resume he appears to have prepared for applying for a position in the travel industry.

16. Next, plaintiff's demeanor during the interviews was at best average. Each of the interviewers noted that plaintiff did not fully answer questions. Harrington, on the other hand specifically addressed the questions and presented herself as knowledgeable in her

field. Harrington also presented herself as a team player when she used the word “we” to address, with specificity, different processes in the Office of Support Services. Albanese noted that he was familiar with plaintiff’s demeanor and found that plaintiff’s demeanor during the interview was not what he would have expected from plaintiff. Albanese’s testimony was particularly credited because he was no longer employed by the college at the time of trial and, therefore, had no perceived bias. Ensworth commented that it appeared that plaintiff was not interested in being at the interview and he questioned whether plaintiff wanted the job. Conversely, Pavelek appeared to be highly motivated during her time with the interview committee. The interviewers noted that Pavelek was organized and completed tasks as well. Plaintiff simply did not interview well and was less impressive than the successful candidates. Further, as discussed above, each interviewer noted that plaintiff exhibited a sense of entitlement during the interviews. During the interviews, plaintiff failed to discuss his qualifications and instead addressed his length of time with the college.

17. Finally, plaintiff did not take the steps necessary to show the interview committees that he was, indeed, the best candidate for the new positions. Harrington and Pavelek each presented the interview committee with information relating to their qualifications for the new positions. In Harrington’s portfolio, she had information relating to her continuing education and explained how that continuing education qualified her for the special populations coordinator position. Although Harrington had not completed more course work for her bachelor degree than had plaintiff, Harrington detailed her educational background for the interview committee. Similarly, Pavelek took information with her to

the interview about her qualifications to convince the interview committee that she was the best applicant for the career link/service specialist position. Because plaintiff failed to either take additional information with him to the interview or fully discuss additional information during the interview, his interviews fell short of the interviews of the other candidates.

18. Plaintiff argues he believes that the interviewers provided job descriptions to Harrington and Pavelek prior to the interviews. Plaintiff asserts that if he had known what the job descriptions were, he would have updated his resume and taken additional information to the interview.
19. This court credits the testimony of the interviewers in this respect. Each of the interviewers testified that they did not discuss the jobs with any candidate prior to the interviews. Further, each of the interviewers denied giving copies of the job descriptions to any candidate prior to the interviews.
20. Plaintiff further argues that the interviewers had the opportunity to question him and should have questioned him about his educational background and qualifications during the interview. Plaintiff, however, misunderstood the interview.
21. Even before the restructuring, plaintiff knew that his position was not a guaranteed position. Plaintiff's position was renewed on a yearly basis depending upon whether the college received a Perkins grant. Once the restructuring focused on his department, plaintiff was even more aware that his employment with the college was in jeopardy. Plaintiff knew that three positions were eliminated and only two new positions were available. At that point, plaintiff should have realized that he had to compete with the



other members of his office for a position.

22. At the time of the interviews, plaintiff had enough information about the positions to present himself as a candidate for those positions. Although it is not clear from the record how far in advance of the interview the candidates received the job vacancy postings, the postings, which all candidates had access to before the interviews, presented plaintiff with enough information to prepare adequately for the interviews. The job qualifications on the vacancy postings pointed to the importance in a psychology or social science background. Plaintiff could have mentioned that he had completed thirteen or fourteen classes in social sciences. He failed to do so. The postings indicated the continuing education units were important. Plaintiff could have detailed his continuing education efforts for the interview committee. He failed to do so. As previously discussed, plaintiff at least could have updated his resume to make it appear that he was applying for a job as a special populations coordinator or career link/service specialist and not attempting to obtain a position in the travel industry. Here again, plaintiff failed to do so. The job postings directed interested candidates to forward a letter of interest and anything else the candidate thought was necessary to the appropriate party. Plaintiff failed to do more than express initial interest in a position. Apparently, plaintiff believed that his years of service with the college alone were all that was necessary for the interview committees to know about his qualifications.
23. Further, this court does not believe it was necessary for the interview committees to elicit pertinent information from plaintiff. All the persons interviewed were treated in the same manner. Plaintiff, like the other interviewees, had the opportunity to present his

qualifications and experience to the committees. The other candidates appeared motivated and eager to obtain the position and had better interviews. Plaintiff failed to bring additional information or discuss his qualifications for the positions.

24. Throughout the interview process, plaintiff exhibited a lack of preparedness. Plaintiff erroneously believed that his years with the college entitled him to greater consideration than the employees who had fewer years experience. Plaintiff had the opportunity to present his credentials and qualifications to the interview committees and he simply failed to do so. Defendant hired candidates that the interviewers perceived as being more prepared, interested, motivated and better qualified for the special populations coordinator and career link/services specialist positions than plaintiff. Based upon the evidence of record, the court finds that plaintiff did not satisfy his burden of showing that the reasons set forth by defendant for hiring the other candidates were pretextual or unworthy of credence. See Ezold, 983 F.2d at 527.
25. Finally, plaintiff could not point to any evidence to establish that the interviewers showed favoritism to women. Plaintiff's opinions were based on a "gut feeling" and not on anything the interviewers did during the interview. Mere beliefs and "gut feelings" are not enough to establish a case of gender discrimination. See Williams v. Borough of West Chester, 891 F.2d 458 (3d Cir.1989).
26. Plaintiff failed to establish that defendant's reasons for not hiring him were pretextual and having failed to meet that burden, judgment must be entered in favor of defendant.

**AND NOW**, this 25<sup>th</sup> day of May, 2007, in accordance with this court's findings of fact

and conclusions of law, **JUDGMENT** is hereby **ENTERED** against plaintiff and in favor of defendant.

The clerk shall mark this case closed.

By the court:

/s/ Joy Flowers Conti  
Joy Flowers Conti  
United States District Judge

cc: Counsel of record